ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED
CLERK, U.S. DISTRICT COURT
By ______
Deputy

MCW, INC., d/b/a BERNARD HALDANE ASSOCIATES,	§	
Plaintiff,	§	
v.	§	NO. 3 02CV 2727G
WWW.RIPOFFREPORT.COM, WWW.BADBUSINESSBUREAU.COM, and EDWARD MAGEDSON a/k/a ED MAGIDSON,	§	
Defendants.	§	

DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS AND BRIEF IN SUPPORT THEREOF

Defendants, Edward Magedson and WWW.BADBUSINESSBUREAU.COM LLC make a limited appearance and file this their Motion to Quash Service of Process and Brief in Support Thereof and respectfully request the court to quash all summons issued in this case for insufficient service of process, as authorized by Federal Rule of Civil Procedure 12(b)(5).

Introduction

1. Plaintiff is MCW, Inc. d/b/a Bernard Haldane Associates; Defendants are Edward Magedson a/k/a Ed Magedson, and WWW.BADBUSINESSBUREAU.COM LLC.

2. Plaintiff sued Defendants for alleged acts of unfair competition pursuant to the Lanham Act, false advertising pursuant to the Lanham Act, unfair competition in Texas at common law, business disparagement, and trademark infringement.

3. The service of process on Defendants is insufficient; therefore, the court should quash the service of process.

Argument

4. Rule 4 (e) of the Federal Rules of Civil Procedure states that service may be effected in any judicial district of the United States by delivering a copy of the summons and complaint to the individual personally, or by leaving copies at the individuals dwelling house with a resident of suitable age and discretion.

5. In this case, a process server dropped documents onto the driveway of a private home, and did not leave the documents with any resident person of suitable age and discretion. Edward Magedson was not present at the time of the process server's attempt to effectuate service. Service was thus insufficient, and the court has not obtained jurisdiction over Edward Magedson or WWW.BADBUSINESSBUREAU.COM LLC.[1]

6. The attached affidavit of Danny Scalf describes the failed attempt to serve the summons and complaint. In short, the process server shouted at a man in a car who was not Edward Magedson, and who did not reside at 1138 S. Rose in Mesa, Arizona. Affidavit of Danny Scalf attached hereto as Exhibit "A". Upon not being able to serve the man in the automobile, the process server apparently dropped the papers in the driveway of 1138 S. Rose in Mesa, Arizona failing to personally serve Edward Magedson.

[1] For the Court's information, Edward Magedson is an individual. He does not own the legal business entity WWW.BADBUSINESSBUREAU.COM LLC, which is presumed to be the entity referenced in one Return of Service. There is no business entity named WWW.RIPOFFREPORT.COM LLC, in spite of the Return of Service referencing that entry.

7. When service of process is insufficient, the court may dismiss the suit or quash the service. *See, e.g., Adams v. Allied Signal Gen. Aviation Avionics,* 74 F.3d 882, 886 (8th Cir. 1996).

8. In this case, the court should quash the service of process because service was ineffective and insufficient in that a process server did not personally serve Edward Magedson and did not leave the documents with any resident person of suitable age and discretion. As such, Defendants were prejudiced by the insufficiency in the service of the summons.

Conclusion

9. For the foregoing reasons, Defendants request the court issue an order quashing the insufficient service on Edward Magedson, WWW.BADBUSINESSBUREAU.COM, and WWW.RIPOFFREPORT.COM., and for all other relief to which Defendants are entitled.

Respectfully submitted,

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Certificate of Conference

I certify that on January 31, 2003, at approximately 10:45 a.m., out-of-state counsel, Maria Crimi Speth, with the law firm of Grant Williams, P.C., conferred with Tom Walsh, counsel for Plaintiff, on behalf of the Defendants regarding Defendants' Motion to Quash Service of Process. Counsel for Plaintiff advised that they oppose Defendants' Motion to Quash Service of Process.

J. Garth Fennegan

Certificate of Service

This certifies that this document was served in accordance with the Federal Rules of Civil Procedure on January 31, 2003.

J. Garth Fennegan

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Affidavit of Danny Scalf

I, Danny Scalf, testify under penalty of perjury as follows:

1. I am a resident of Maricopa County, Arizona, residing in East Mesa.

2. On December 31, 2002 at approximately 3:30 p.m. I drove to 1138 S. Rose, Mesa in a green Pontiac GM sedan with tinted windows, to pick oranges and grapefruits at that address. I do not reside at that address.

3. I pulled the car into the garage at 1138 S. Rose, and closed the garage door. When I left, I opened the garage door and drove the car into the street.

4. While I was in the street, a woman with bleached blonde/brown hair approached the car. She slapped the right rear of the vehicle several times. I heard her say "Ed Magidson, I have . . ." I did not respond to her. I drove away.

5. As I drove away I observed her walking towards the house at 1138 S. Rose.

6. I returned to 1138 S. Rose at about 4:15 p.m. on December 31, 2002, and found a pile of papers in front of the garage, and many papers strewn across the yard and into the neighboring yard.

7. The papers were related to a lawsuit in the U.S. District Court, Northern District of Texas involving Bernard Haldane and Ed Magidson.

Danny Scalf (signature)
Danny Scalf

1-30-03
Dated

EXHIBIT A